

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARCUS ORLANDO TATE, :
a/k/a MARCUS ORLANDO TAITE, :
a/k/a DR. ELIJAH JOSHUA :
MUHAMMAD, II, a/k/a DRELIJAH :
JOSHUA MUHAMMAD, :

Plaintiff, :

vs. : CIVIL ACTION 08-0333-BH-M

U.S. MAGISTRATE SONJA F. BIVINS, :

Defendant. :

ORDER

After due and proper consideration of all portions of the file deemed relevant to the issues raised, and there having been no objections filed¹, the Report and Recommendation of the Magistrate Judge (Doc. 6) made under 28 U.S.C. § 636(b)(1)(B) is **ADOPTED** as the opinion of this Court. It is **ORDERED** that this action be **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(g) because plaintiff

¹Although the plaintiff filed a number of documents (Docs. 8, 10, 14 and 16) since the entry of the subject Report and Recommendation, in none of these documents did he challenge any of the relevant findings or conclusions of the Magistrate Judge, namely that this action is subject to the proscription set forth in 28 U.S.C. § 1915(g). Instead, plaintiff sought essentially only leave to proceed without prepayment of fees without addressing his ineligibility for such relief.

cannot avail himself of § 1915(g)'s exception and did not pay the \$350.00 filing fee at the time he filed this action. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (holding that an action must be dismissed without prejudice when an inmate who is subject to 28 U.S.C. § 1915(g) does not pay the full filing fee at the time he initiates the action); *Vanderberg v. Donaldson*, 259 F.3d 1321, 1324 (11th Cir.)(holding that the filing fee paid must be paid by an inmate subject to § 1915(g) at the time an action is commenced), cert. denied, 535 U.S. 976 (2002).

DONE this 10th day of July, 2008.

s/ W. B. Hand
SENIOR DISTRICT JUDGE